



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/802,631 | 03/08/2001 | David E. Babiarz | 04489/91885-501 | 9953 |

7590 02/13/2003

Steven J. Goldstein, Esq.
FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202-4182

EXAMINER

MADSEN, ROBERT A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1761 | 6 |

DATE MAILED: 02/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/802,631 | BABIARZ ET AL. |
| Examiner | Art Unit | |
| Robert Madsen | 1761 | |

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 November 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3,6-9 and 13 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3,6-9 and 13 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- 1) Certified copies of the priority documents have been received.
- 2) Certified copies of the priority documents have been received in Application No. _____.
- 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Amendment filed November 13, 2002 has been entered. Claims 4,5,10-12 have been cancelled. Claims 1-3,6-9,13 remain pending in the application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2,7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazarus (US 1566146).

4. Lazarus teaches forming candy baskets comprising a candy strip, which could also be fruit, as recited in claim 2 (Page 1, lines 14-19), that is coiled with multiple rotations, as recited in claims 1 and 7, wherein the end portion includes a trailing end of the strip as recited in claim 8 (See item 15, Figure 5 in the outer diameter). Lazarus also teaches a tacked region by application of heat since Lazarus teaches the temperature is maintained high enough so that the candy remains sticky enough that the coiled rotations adhere to one another, as recited in claims 1 and 7 (Page 1, lines 38-45, 65-82,100-106, Figure 5). The end portion is attached proximate another portion near the end portion as recited in claim 7 (See Figure 5 at the outer diameter).

5. Claims 1,2,7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmerman et al. (US 5723163).
6. Zimmerman et al. teach a rolled fruit based strip, as recited in claim 2, that is coiled with multiple rotations, with the end portion including a trailing end as recited in claim 8, to define two or more layers in contact with each other as recited in claims 1 and 7, wherein each layer is defined by a strip of fruit on top of a sheet of support material. The tacked region is attached by pressure with a pressure plate, as recited in claims 1 and 7, in order that the end portion is attached to another portion proximate the end portion as recited in claim 7(Column7, line 30 to Column 8, line 60).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
8. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazarus (US 1566146) as applied to claims 1,2,7, and 8 above, further in view of Suzuki et al. (JP 63024853A).
9. Lazarus teaches the coiled candy can be decorated, with candy flowers or other ornamental decorations known to candy makers (Page 2, lines 30-44), but

is silent in teaching granular items or sugar per se is attached to the strip, as recited in claims 3 and 9. Suzuki et al. are relied on as evidence of the conventional candy flower comprising a granular sugar coating. Therefore, it would have been obvious to attach sugar to the strip in granular form, in the form of a candy flower, since one would have been substituting one conventional candy flower decoration composition for another.

10. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al. (US 5723163).as applied to claims 1,2,7, and 8 above, further in view of Packer et al. (US 5348751).

11. Zimmerman et al. teach the rolled product is susceptible to deterioration when exposed to moisture during storage (Column 6, lines 42-45), but is silent in teaching packaging the product in a bag. Packer et al. teach protecting coiled food products from moisture prior to consumption by packing them in a bag (Example 1, Column 1, lines 43-54, Column 2, line 33 to Column 3, line 9). Therefore it would have been obvious to further package the coiled product of Zimmerman et al. in a bag since Zimmerman et al. teach the product is susceptible to deterioration when exposed to moisture and Packer et al. teaches preventing coiled food deterioration due to moisture by packaging in a bag.

Response to Arguments

12. Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Varkas et al. (US 1667335) teaches a coiled candy.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is

assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen *R*
Examiner
Art Unit 1761
February 10, 2003

S. Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
for M. Cano